Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-117

EDWARD MITCHELL, et al.,
Petitioners,

v.

BENJAMIN E. CARMICHAEL, Commissioner of Education of the State of Tennessee, et al.,
Respondents,

and

EDWARD MITCHELL, et al.,
Petitioners,

v.

JUDGE TAYLOR CRAWFORD, et al.,
Respondents.

Petition for Writs of Certiorari to the Supreme Court of Tennessee and to the Court of Appeals of Tennessee

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the Supreme Court of Tennessee in *Edward Mitchell v. Benjamin E. Carmichael* is unreported and is included in petitioners' appendix at B-79. The opinion of the Court

of Appeals of Tennessee in *Edward Mitchell v. Judge Taylor Crawford* is unreported and is included in petitioners' appendix at B-82.

JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the Supreme Court of the United States has jurisdiction to review decisions of the Supreme Court of Tennessee and the Court of Appeals of Tennessee which were based solely upon the statutes and common law of the State of Tennessee.

STATUTORY PROVISIONS INVOLVED

Respondents' assertion that the Supreme Court of the United States has no jurisdiction to review the decisions of the Supreme Court and Court of Appeals of Tennessee rests upon 28 U.S.C. § 1257(3) which provides that:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

STATEMENT OF THE CASE

The issues involved in these cases have been litigated since June, 1970 when counsel for plaintiffs first challenged the ability of a Tennessee county court to issue educational bonds without referendum. App. B-1, B-27. The two cases now before the Court were initiated in 1974. App. B-49, B-81. Both cases sought to raise the same question of the validity of school bonds issued under the provisions of T.C.A. § 49-701 *et seq.* even though one was filed in Davidson County, Tennessee (Nashville) and the other in Lincoln County, Tennessee (Fayetteville).

The county defendants were dismissed from the Davidson County case for lack of subject matter jurisdiction over them in the Chancery Court of Davidson County. An interlocutory appeal was attempted. In *Mitchell v. Carmichael*, 522 S.W.2d 869 (Tenn. 1975), App. B-74, the case was remanded to the Chancery Court of Davidson County.

In the meantime, plaintiffs filed suit in Lincoln County. A hearing on the merits of that case was held and judgment rendered in favor of respondents. The case was appealed to the Court of Appeals for the Middle Section of Tennessee. The Court of Appeals held that the bond issue was a valid issue without referendum. The Court also found Tennessee's educational statutes constitutional. App. B-82. The Supreme Court of Tennessee denied the petition for a writ of certiorari. App. B-97.

Plaintiffs perfected an appeal from the final dismissal of their Davidson County case and the Supreme Court of Tennessee held that plaintiffs were without standing to challenge the actions of the state educational officials. App. B-79. The Supreme Court also took note of the fact that the bond issue has been two years delayed because of the present litigation.

Petitioners now ask this Court to review the decisions of the Supreme Court and Court of Appeals of Tennessee.

ARGUMENT

The Supreme Court of the United States Lacks Jurisdiction to Hear This Case Because the Decisions of the Supreme Court of Tennessee and the Court of Appeals of Tennessee Were Based Solely Upon Interpretations of the Laws of the State of Tennessee and Not Upon Federally Guaranteed Constitutional or Statutory Rights.

The decision of the Supreme Court of Tennessee in *Mitchell v. Carmichael* is based solely upon two concepts of state law. First, the Court determined that plaintiffs had no standing to sue state officials. *Sanders v. Carmichael*, 527 S.W.2d 92 (Tenn. 1975). Second, the Court implicitly reiterated that venue in suits against local officials is not transitory and that such suits must be brought in the county where the officials reside. *Adams v. State ex rel. Chattanooga Coke and Chemicals*, 415 S.W.2d 424 (Tenn. 1974). The decision is based solely upon these considerations which are strictly matters of interpretation of the laws of Tennessee.

The decision of the Court of Appeals in *Mitchell v. Crawford* is based primarily upon the interpretation of the state statutes governing the issuance of school bonds by county courts, the governmental agencies of Tennessee counties. The Court of Appeals interpreted and applied the case of *State v. Safley*, 172 Tenn. 385, 112 S.W.2d 831 (1938). The Court also found that the bond issuance statutes and the educational statutes were constitutional. The Court did not rely upon federal statutes or the federal constitution in rendering its decision.

As the courts in Tennessee have not relied upon federal grounds in finding for respondents, neither have petitioners in this case asserted any substantial federal claim which would be subject to interpretation by the Supreme Court of the United States.

Petitioner simply asks the Supreme Court of the United States to review the interpretation of state law by the courts of Tennessee and to substitute its judgment for the judgment and interpretation of the courts of Tennessee. Petitioner asks that the United States Supreme Court review the concepts of standing, subject matter jurisdiction, the precedential value of cases, the ability of a state Supreme Court justice to hear cases, and appellate procedure. These are questions of state law.

No issues of federal law were decided by the Tennessee courts nor have any been raised by petitioners. The state law basis for the courts' decisions are independent of federal law and are adequate to support the decisions of the Tennessee courts. Therefore, the Supreme Court of the United States is without jurisdiction to review the decisions of the Supreme Court and Court of Appeals of Tennessee. *Wood v. Chesborough*, 228 U.S. 672 (1913).

CONCLUSION

Because the decisions of the Supreme Court and Court of Appeals of Tennessee were based solely upon Tennessee law, the petition for writs of certiorari should be denied.

Respectfully submitted,

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